

MINUTES OF THE SOLID WASTE BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A
Indianapolis, Indiana
January 16, 2001

The meeting was called to order by Chairperson Jeffry Carter. Those present for all or part of the meeting were:

Mr. Marlin Chambers
Mr. Rick Dyar
Mr. Charles Himes
Mayor William Graham
Ms. Frona Powell
Dr. Stephen Wintermeyer
Mr. Howard Cundiff (Proxy, Indiana State Department of Health)
Mr. Thomas Hohman (Proxy, Department of Natural Resources)
Ms. Melanie Darke (Proxy, Lieutenant Governor's Office)
Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following IDEM staff members were present for all or part of the meeting:

Mr. Bruce Palin, Deputy Assistant Commissioner, Office of Land Quality
Mr. Michael Dalton, Section Chief, Rules, Planning and Outreach
Ms. Lynn West, Operations and Information Branch, Rules, Planning and Outreach
Mr. Steve Mojonier, Operations and Information Branch, Rules, Planning and Outreach
Mr. Gary Romesser, Industrial Waste Group Section
Mr. Michael Anderson, Permits Branch
Mr. Jeff Moody, Science Services Branch
Mr. Bob Moran, Science Services Branch
Ms. Ann Long, Office of Legal Counsel

1. Chairperson Carter opened the meeting at 1:34 p.m., and asked for additions or corrections to the minutes of the October 17, 2000 Solid Waste Management Board meeting. There being none, Ms. Frona Powell moved for approval of the minutes, and Mr. Marlin Chambers seconded. The motion passed unanimously.

APPROVAL OF
MINUTES
2. Chairperson Carter then asked Mr. Bruce Palin to address the Board. Mr. Palin said that the agency was in the very early stages of planning for the new biennium and identifying areas for focus over the next two years. He said that input would be welcome. He then asked Ms. Lynn West to talk about rulemaking projects.

ASSISTANT
COMMISSIONER'S
REPORT

Ms. West distributed the monthly Rulemaking Projects Calendar and mentioned that no new rulemaking actions had been added to the list. Ms. West then asked for suggestions regarding the October 2001 Board meeting. Typically, the autumn Board meeting is held outside of Indianapolis and the Board visits a facility, i.e., landfill, recycling facility.

Ms. West then provided an update on the Processing Facilities Rule. After a brief review of the history of the rule, Ms. West provided information on a meeting that had recently taken place and said that there will be a public meeting on January 25, 2001, from 10:00 a.m., to 3:00 p.m., Room 1319, Indiana Government Center North. The purpose of this meeting is to both offer comment and receive input on various related topics that were identified at a previous meeting.

Chairperson Carter then announced the following rulemaking actions:

- < Preliminary Adoption - Rules of the Board at 329 IAC 1-1, 329 IAC 12-2 and 329 IAC 13-3, Readoption of the Rules in Title 329 Under IC 13-14-9.5 Rule (Continued from the November 21, 2000 Solid Waste Management Board Meeting);
- < Final Adoption - Amendments to Rules of the Board at 329 IAC 3.1-1-7; 329 IAC 3.1-6-2; 329 IAC 3.1-7-2; 329 IAC 3.1-7-3; 329 IAC 3.1-7-4; 329 IAC 3.1-7-5; 329 IAC 3.1-7-6; 329 IAC 3.1-7-7; 329 IAC 3.1-7-8; 329 IAC 3.1-7-9; 329 IAC 3.1-7-10; 329 IAC 3.1-7-11; 329 IAC 3.1-7-12; 329 IAC 3.1-7-13; 329 IAC 3.1-9-2; 329 IAC 3.1-10-2; 329 IAC 3.1-12-2; 329 IAC 3.1-14-6; 329 IAC 3.1-14-16; 329 IAC 3.1-15-4; 329 IAC 3.1-15-6; and 329 IAC 3.1-16-2; hereafter known as the Management of Hazardous Waste: The 2000 Hazardous Waste Annual Update Rule; preliminarily adopted and published in the Indiana Register on December 1, 2000, at 24 IR 720;
- < Continuation of Preliminary Adoption - Rules of the Board at 329 IAC 3.1-6-6, hereafter known as the Rules Concerning the Exclusion of a Hazardous Waste from Regulation Under 329 IAC 3.1 Concerning Heritage Environmental Services, LLC: Delisting: Electronic Arc Furnace Dust Rule; continued to the March 20, 2001 Solid Waste Management Board Meeting.

All of the above rules are available for public inspection in the file room of the Office of Land Quality, 12th floor, Indiana Government Center North, Monday through Friday, 8:30 a.m. to 4:30 p.m. Instructions were given for those individuals who wanted to offer public testimony and the court reporter was affirmed.

3. Chairperson Carter then announced that amendments of the rules of the Board at 329 IAC 1-1, 329 IAC 12-2,

PRELIMINARY ADOPTION
AMENDMENTS TO RULES
CONCERNING THE READOPTION

and 329 IAC 13-3, Readoption of the Rules in Title 329 Under IC 13-14-9.5. He introduced Exhibit A, the draft rule, into the record and then asked Lynn West to address the Board.

OF RULES IN TITLE 329
AT 329 IAC 1-1, 329 IAC 12-2 AND
329 IAC 13-3 PURSUANT TO IC 13-14-9.5

Ms. West reviewed the history of the readoption procedure to prevent the Board's rules from expiring after seven years, known as the sunset provision. She explained that the rulemaking presented to the Board included those rules that received comments during the first notice of the readoption rules and were not included in any other rulemaking and therefore must go through the usual rulemaking procedures.

Chairperson Carter then asked for Board discussion. There being none, Chairperson Carter then called on Mr. Mark Shere, Attorney at Law, representing Bethlehem Steel, to offer public testimony. Mr. Shere urged the Board not to preliminarily adopt the rule and asked the Board to request revision of the used oil rules. Mr. Shere also presented ideas on how revisions could be accomplished and asked for IDEM to request comment from other interested parties. For a verbatim account of Mr. Shere's testimony, please see pages 13 through 20 of the official transcript of this meeting. Board discussion with Mr. Shere continued regarding the process of incorporating federal rules. Chairperson Carter then closed the hearing but asked Mr. Palin for clarification regarding minor violations which had also come up during discussion. Mr. Palin reviewed the minor violation aspect of the rule as opposed to what constitutes a major violation. Ms. Ann Long brought out that only a small portion of the used oil rule was commented on so that one portion was all that had to be opened. Primary adoption of the rule under consideration would not prohibit any future actions on the used oil rule. Discussion continued on the subjects of how to open future rulemaking actions the used oil rules, and how someone who had a used oil spill would be able to identify what sort of violation had been committed. There were some final comments on possibly having staff report back to the Board in 30 to 60 days about concerns over the used oil rule. For a verbatim account of Board discussion, please see pages 21 through 42 of the official transcript of the meeting. There being no questions from the Board, Chairperson Carter asked for a motion to adopt IDEM's suggested amendments to the rule. Mr. Howard Cundiff so moved and Mr. Chuck Himes. The motion passed unanimously. After the vote was concluded, Mr. Carter asked for staff to review the minor violations issue and report back in sixty days.

4. Chairperson Carter then announced that amendments to the rules for Management of Hazardous Waste: The 2000 Hazardous Waste Annual Update. He introduced Exhibit B-1,

FINAL ADOPTION
MANAGEMENT OF HAZARDOUS
WASTE: THE 2000 HAZARDOUS
ANNUAL UPDATE

IDEM's suggested changes, and Exhibit B the preliminarily adopted rule with changes.

He then asked Mr. Steve Mojonnier to address the Board.

Mr. Mojonnier explained that in order for Indiana to administer the Hazardous Waste Management Program in lieu of the US Environmental Protection Agency, it is necessary for Indiana to keep the program current by adopting federal amendments to the program. Mr. Mojonnier reviewed the major provisions, corrections and regulations that will make Indiana's hazardous waste program consistent with the federal program. Mr. Mojonnier said that of the ten federal regulations and four corrections in this rule, eight have no cost or savings, two may potentially reduce costs, and four technical corrections have no effect on costs to regulated entities. For a verbatim account of Mr. Mojonnier's remarks, please see pages 44 through 46 of the official transcript of this meeting.

Chairperson Carter asked for questions from the Board. There being none, Chairperson Carter called on Elizabeth DuSold, representing Eli Lilly and Company, to address the Board. Ms. DuSold said that she wanted to bring to the Board's attention that they were expecting another technical amendment to come out during March to April of 2001. Due to the length of time required to get an annual update done, she wanted to know if adopting the expected change could be accomplished more quickly or could the change be adopted through a nonrule policy. Mr. Himes echoed Ms. DuSold's concern about the time lag between federal rule changes and state adoption of those changes and Ms. Darke asked about how long it takes to create a nonrule policy. Mr. Palin said that a nonrule policy document would take less time than a rulemaking action, but actual time involved would depend on how complicated or how simple it is to write.

Chairperson Carter asked for a motion to adopted Exhibit B-1, IDEM's 21 suggested changes. Mr. Rick Dyar so moved and Mr. Chambers seconded. The motion passed unanimously. Chairperson Carter then asked for a motion to adopt the rule as amended. Mr. Graham so moved and Mr. Dyar seconded. The motion passed unanimously.

5. Chairperson Carter then announced that the hearing to consider preliminary adoption of rules of the Board at 329 IAC 3.1, Exclusion of a Hazardous Waste from Regulation Under 329 IAC 3.1 (Heritage Environmental Services, LLC: Delisting: Electronic Arc Dust) Rule, would be continued to the Solid Waste Management Board meeting of March 20, 2001, at the Indiana Government Center South, Conference Center Room A, at 1:30 p.m. There was no discussion or public comment offered.

PRELIMINARY ADOPTION
EXCLUSION OF A OF HAZARDOUS
WASTE FROM REGULATION UNDER
329 IAC 3.1
(HERITAGE ENVIRONMENTAL
SERVICES, LLC: DELISTING:
ELECTRONIC ARC DUST)
6. Chairperson Carter then continued with the agenda, indicating that there would be a presentation of a nonrule policy document (NPD) regarding F006 Recycled Waste: Allowing Large Quantity Generators 180 or 270 Days Accumulation. The NPD is available for public inspection, comment and copying in the file room of the Office of

Land Quality, 12th Floor, Indiana Government Center North, Monday through Friday, between the hours of 8:30 a.m., and 4:30 p.m. He then introduced Mr. Gary Romesser of the Office of Land Quality, Industrial Waste Group Section.

Mr. Romesser said that this NPD allows large quantity generators additional time to accumulate waste water treatment sludges up to 180 days, or 270 days if transported to a metal recovery facility 200 miles away or further. That allows a large quality generator time enough to locate the appropriate facility, and then to accumulate enough sludge so that a reclaimer will take it. (Reclaimers tend to turn away smaller quantities.) For a verbatim account of Mr. Romesser's comments, please see pages 55 through 57 of the official transcript of this meeting.

Chairperson Carter said that written comments should be sent, within the next 30 days, to Mary Beth Touhy, Assistant Commissioner of the Office of Land Quality. While no formal written response will be provided by the department, if changes are made, the NPD will be presented again and placed in the file room for comment. He also said that this NPD will be effective 30 days from today's presentation, February 15, 2001.

7. Chairperson Carter then announced the next NPD on the agenda, "RISC (Risk Integrated System of Closure) Technical Resource Guidance Document" and "RISC (Risk Integrated System of Closure) Users Guide" would be presented. He introduced Mr. Bruce Palin, Deputy Assistant Commissioner, to address the Board regarding the NPD.

Mr. Palin said that the NPD presented is basically a guidance document "... for the Leaking Underground Storage Tank Program, Voluntary Remediation Program, state clean-up program, and the Hazardous Waste Closure and Corrective Action Programs on a method for evaluating contamination at sites, ... defines how to do sampling and determining nature and extent of contamination, and evaluating those relative to risk to human health that are represented by these contaminated sites." Mr. Palin said that in order for the policy to be successful, communication with staff implementing the policy is a must and on the other hand, ideas for revision should be encouraged from all affected parties. He indicated that the department is trying to set up some method for incorporating revisions that will come up in the future. Finally, Mr. Palin directed the Board's attention to the transition policy that will provide continuity while changing over to the new NPD. For a complete account of Mr. Palin's remarks, please see pages 58 through 63 of the official transcript of this meeting.

There were a number of subjects that came up for discussion. Mayor Graham asked about a future revision in the RISC document that would allow for removal of a deed restriction if, for example, technology is developed that would facilitate cleanup not currently possible. Ms. DuSold, attorney for Eli Lilly, expressed concern that RCRA hazardous waste clean-ups and closures, and corrective actions are more conservative than current EPA policy on industrial closures. Ms. DuSold noted that clarification is

needed regarding what is acceptable regarding the clean-up of spills. Lastly, Ms. DuSold asked for appropriate procedure to keep the public informed on future revisions of the NPD. She suggested using the IDEM website.

Chairperson Carter then called on Mr. Mark Shere to offer his comments. Mr. Shere first reviewed his concerns with the transition policy and the stricter standards that apply with the new NPD. He requested that implementation of the new standards will occur in a way "... where people won't fear being punished for doing the right thing." For a complete account of Mr. Shere's remarks please see pages 76 through 83 of the official transcript of this meeting.

Chairperson Carter said that written comments should be sent, within the next 30 days, to Mary Beth Touhy, Assistant Commissioner of the Office of Land Quality. While no formal written response will be provided by the department, if changes are made, the NPD will be presented again and placed in the file room for comment. He also said that this NPD will be effective 30 days from today's presentation, February 15, 2001.

8. Chairperson Carter adjourned the meeting at 3:40 p.m.

ADJOURNMENT

The next meeting will be March 20, 2001, at 1:30 p.m., in the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

CHAIRPERSON

TECHNICAL SECRETARY